

(2010) 04 JH CK 0024

Jharkhand High Court

Case No: None

The State of Jharkhand

APPELLANT

Vs

Salika Bibi

RESPONDENT

Date of Decision: April 5, 2010

Hon'ble Judges: Gyan Sudha Mishra, C.J; Rakesh Ranjan Prasad, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This appeal has been preferred by the State of Jharkhand against the order dated 22.9.2008 passed by the learned Single Judge in W.P (C) No. 1293/2005, by which the learned Single Judge had been pleased to allow the writ petition with a direction to the respondents to grant a sum of Rs. 1 lac by way of compensation to the petitioner's family and employment to an eligible male member of the petitioner's family and also to ensure that adequate police protection is provided to the petitioner and the members of his family, particularly at the petitioner's house. It was directed that the above exercise must be completed within a period of three months from the date of passing of the order of the learned Single Judge.

2. The appellant, State of Jharkhand, submitted itself to the impugned order as it had not preferred any appeal against the same, but after expiry of the period of limitation and with a delay of 113 days, it preferred to file an appeal against the impugned order supporting the appeal with the application for condonation of delay. The explanation given out in the application for condonation of delay is hardly satisfactory as it is a repetition of the hackneyed ground that the file travelled from one department to another before a decision could be taken to file an appeal and in that process, the period of limitation for filing the appeal expired.

3. Although we are not satisfied with the explanation offered by the appellant State in regard to the delay in filing the appeal, we, in the interest of justice, thought it appropriate to consider the matter on merit ignoring the delay.

4. The counsel appearing for the respondent State submitted that the order passed by the learned Single Judge for making payment of Rs. 1 lac and for grant of a job is not sustainable as there is a circular of the State Government issued in the year 2003 granting relief to the legal representative of the victim, which was to be made effective only from 15.11.2000. It was submitted that as the son of the petitioner expired way back in the year 1994, although admittedly in the Naxalite activities, she is not entitled to get the relief, as the circular for grant of such relief is of the year 2003.

5. However, from the impugned order, we have noticed that the case of the petitioner is not based on the circular issued by the State, but rests on the claim that she had lost her son in the Naxalite activities and hence, the relief claimed was based on the plea of justice and fairplay and for this purpose, the claim for payment of compensation by way of monetary benefit and a job was raised, which perhaps subsequently prompted the State authorities to issue a circular.

6. In the first place, it is difficult for us to appreciate as to how a discrimination can be made between the legal representative of one victim and the other merely on the ground of the date of death relying upon the plea of prospective effect of the circular earmarking a cut off date as the claim of compensation by the legal representative of the victim will have to be treated as a subsisting cause of action and cannot be denied if the legal representative of the deceased is left in lurch on account of death of the victim while encountering the Naxalite activities. It is surely the duty of the State to do the same by way of expeditious settlement. If the said duty is not discharged by the State authorities promptly which creates a cause for the legal representatives of the victim to move the Court, the delay in offering compensatory benefit cannot be attributed to the beneficiary of the victim and it is certainly the State authorities which should have discharged the onerous legal duties expeditiously and promptly.

7. In the instant matter, if the circular had been issued to grant compensation only to the victims who had died after the year 2000, the same cannot be held to be having statutory effect so as to deprive the legal representatives of those who had died prior to the year 2000, as the same would clearly be unjust and discriminatory and we have already stated that the petitioner's case was not based on the circular of 2000 so as to deprive her of the said benefit. Even if it was so, the benefit could not have been deprived as the circular cannot be held to be having statutory effect so as to deprive the benefit although it resulted into unjust discrimination and hence violative of the constitutional mandate of equality ♦ two well known to be quoted.

8. For the reasons aforesaid, we uphold the order passed by the learned Single Judge and dismiss the appeal on merit at the admission stage itself as also on the ground of laches and delay.